

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED
COMMUNICATIONS UNIT
2017 JUN -6 PM 3:23

CURTIS NICHOLS; AVERY FORTNER; WESLEY
JOHNSON; LARRY McNAIR; ATIBA JOHNSON

Write the full name of each plaintiff.

CV

(Include case number if one has been
assigned)

17CV 4269

COMPLAINT

(Prisoner)

-against-

N.Y.C.D.O.C.S. COMM. JOSEPH PONTE;

E.M.T.C. WARDEN K. SMALLS; DEPUTY

WARDEN SECURITY BAILEY; CAPTAIN BAEZ;

C.O. ROSA; C.O. CACACE; CAPTAIN PURDY. C.O. CACACE #11626;

Do you want a jury trial?

☒ Yes ☐ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

☒ Violation of my federal constitutional rights

☐ Other: UNSAFE, UNHEALTHY PRISON CONDITIONS; HEALTH CODE VIOLATIONS

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

CURTIS

NICHOLS

First Name

Middle Initial

Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

#

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

ERIC M. TAYLOR CENTER (E.M.T.C.)

Current Place of Detention

10-10 HAZEN ST, E.M.T.C., EAST ELMHURST, N.Y. 11370

Institutional Address

est elmhurst,

n.y.

11370

County, City

State

Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☒ Other: VIOLATION OF PAROLE (V.O.P.)

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

JOSEPH	PONTE	
First Name	Last Name	Shield #
NEW YORK CITY DEPARTMENT OF CORRECTION COMMISSIONER		
Current Job Title (or other identifying information)		
75-20 ASTORIA BLVD.		
Current Work Address		
EAST ELMHURST,	N.Y.	11370
County, City	State	Zip Code

Defendant 2:

KISA	SMALLS	
First Name	Last Name	Shield #
E.M.T.C. WARDEN		
Current Job Title (or other identifying information)		
10-10 HAZEN ST, E.M.T.C.		
Current Work Address		
EAST ELMHURST	N.Y.	11370
County, City	State	Zip Code

Defendant 3:

DEPUTY WARDEN SEC.	BAILEY	
First Name	Last Name	Shield #
E.M.T.C. DEPUTY WARDEN SECURITY		
Current Job Title (or other identifying information)		
10-10 HAZEN ST, E.M.T.C.		
Current Work Address		
EAST ELMHURST	N.Y.	11370
County, City	State	Zip Code

Defendant 4:

	BAEZ	
First Name	Last Name	Shield #
11 UPPER HOUSING AREA CAPTAIN ON 4/29/17 7:00 A.M. TO 3:0 P.M.		
Current Job Title (or other identifying information)		
10-10 HZEN ST, E.M.T.C.		
Current Work Address		
EAST ELMHURST	N.Y.	11370
County, City	State	Zip Code

C.O. ROSA
11 UPPER HOUSING AREA B OFFICER
ERICT M. TAYLOR CENTER (E.M.T.C.)
10-10 HAZEN ST.
EST ELMHURST, N.Y. 11370

C.O. CAGACE BADGE #11626
MAILROOM OFFICER E.M.T.C.
10-10 HZEN ST.
EST ELMHURST, N.Y. 11370

CAPTAIN PURDY
11 UPPER HOUSING AREA CAPTAIN (CAMRA SUPERVISOR)
10-10 HAZEN ST, E.M.T.C.
EAST ELMHURST, N.Y. 11370

V. STATEMENT OF CLAIM

Place(s) of occurrence: ERIC M. TAYLOR CENTER HOUSING AREA 11 UPPER; E.M.T.C. MAILROOM.

Date(s) of occurrence: 4/29/17 4/1/17 TO PRESENT, CONTINUED ON.....

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

PLAINTIFF CURTIS NICHOLS, PRO SE ON BEHALF OF THE PLAINTIFFS NAMED HEREIN MAKES THIS CLAIM AND ALLEGE THE FOLLOWING BASED ON FACTS FOR AN UNDETERMINED AMOUNT OF DAMAGES FROM ALL THE DEFENDANTS NAMED HEREIN FOR THE VIOLATION OF THEIR CONSTITUTIONAL RIGHTS, AND PUBLIC HEALTH CODES, DENIAL OF ACCESS TO THE COURTS, DELIBERATE INDIFFERENCE; CRUEL AND UNUSUAL PUNISHMENT; FREEDOM OF EXPRESSION; THE EQUAL PROTECTION CLAUSE IN THE FOURTEENTH AMENDMENT; THE MINIMUM STANDARDS OF THE BOARD OF CORRECTION, NEW YORK CITY DEPARTMENT OF CORRECTION NEW YORK CODES RULES AND REGULATIONS (N.Y.C.R.R.) ON THE MORNING OF 4/29/17 IN THE ERIC M. TAYLOR CENTER (E.M.T.C.) DURING THE 7:00 A.M. TO 3:00 P.M. SHIFT IN HOUSING UNIT 11 UPPER THERE WAS A CONSTANT RUNNING TOILET IN THE LAST STALL SPROUTING FECES AND URINE FOR THE PAST WEEK WITHOUT REPAIR. THAT ON 4/29/17 THAT SAID TOILET WAS BROKEN FROM AN UNKNOWN SOURCE CAUSING WATER, FECES, AND URINE TO FLOOD THE BATHROOM, SHOWER AREA, AND THE DORMITORY. THE C.O. DEFENDANT ROSA INFORMED HOUSING AREA CAPTAIN BAEZ, WHO THEN CALLED MAINTENANCE, BUT NEVER APPEARED FOR REPAIR SOME HOURS LATER. DURING THAT MEANTIME IT WAS BOTH DEFENDANTS C.O. ROSA, AND CAPTAIN BAEZ DUTY TO MOVE THE ENTIRE DORMITORY AND ALL THE PLAINTIFFS FOR HEALTH AND SAFETY PRECAUTIONS BUT THE DEFENDANT N.Y.C.D.O.C. COMM. JOSEPH PONTE COULD NOT BE CONTACTED DUE TO HIS ABSENCE AND HIS RECENT RENDEVOUS IN A TAX PAYER'S VEHICLE IN HIS MANSION IN BATAINE THAT WAS RECENTLY NOTED IN THE NEW YORK DAILY NEWS

IN FACT THE DEFENDANT COMMISSIONER N.Y.C.D.O.C.S. HAS NOW RESIGNED FROM SAID POSITION AT A POOR ATTEMPT TO ESCAPE NUMEROUS COMPLAINTS FILED AGAINST HIMSELF AND HIS STAFF DURING HIS BRIEF TENURE AS THE COMMISSIONER POSITION AS THE NEW YORK CITY DEPARTMENT OF CORRECTION CHIEF. (SEE DAILY NEWS ARTICLE ATTACHED HERETO AS EXHIBIT "A"). AS THEIR FECES AND URINE FLOWED THROUGH THE 11 UPPER DORMITORY ON APRIL 28, 2017 the defendants CAPTAIN BAEZ AND C.O. ROSA MADE HELPLESS EFFORTS TO HAVE ALL PLAINTIFFS EVACUATED TO A SAFE AND HEALTHY ENVIRONMENT WHERE THEY WOULD NOT HAVE TO BE SUBJECTED TO UNDUE AND UNNECESSARY INHALATION OF TOXIC WASTE THAT FLOWED FROM THE OPEN TOILET IN THE BATHROOM. INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

PAIN AND SUFFERING. EMOTIONAL STRESS. MENTAL ANGUISH. EXCESSIVE COUGHING, SNEEZING, AND SCRATCHING. EB FEAR OF FUTURE INFECTIONS OF DISEASES ASSOCIATED WITH CANCER. NECK, BACK, HEAD INJURIES FROM SLIP AND FALL ACCIDENTS IN SHOWER AREA. NIGHTMARES, INSOMNIA SKIN RASHES AND IRRITATION. INHALATION OF TOXIC CHEMICALS. EYE IRRITATIONS ANXIETY, FEAR OF FALLING IN SHOWER AREA.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

PLAINTIFFS SEEK PAIN AND SUFFERING DAMAGES FROM EACH DEFENDANT IN THEIR INDIVIDUAL AND OFFICIAL CAPACITY IN THE AMOUNT OF \$250,000.00 PLAINTIFFS ALSO SEEK EMOTIONAL STRESS AND MENTAL ANGUISH DAMAGES FROM EACH DEFENDANT IN THE AMOUNT OF \$250,000.00 AND THE PLAINTIFFS FINALLY SEEK PUNITIVE DAMAGES FROM EACH DEFENDANT IN THE SAME CAPACITY IN THE AMOUNT OF \$500,000.00 FOR A SUBTOTAL OF \$7.5 MILLION DOLLARS FOR EACH PLAINTIFF. TO ORDER THE DEFENDANTS TO MAKE IMMEDIATE RENOVATIONS IN DORMITORY 11 UPPER; ORDER THE REMOVAL OF C.O. CAGAGE FROM THE MAILROOM, AND/OR ORDER DEFENDANTS TO LOG ALL INCOMING LEGAL MAIL.

PRIOR TO THE START OF APRIL, 2017 THE E.M.T.C. SECURITY WARDEN, AND THE E.M.T.C. WARDEN DEFENDANTS, AS WELL AS DEFENDANT COMMISSIONER JOSEPH PONTE WERE INFORMED VIA E-MAILS FROM THE BOARD OF CORRECTION THAT INMATES IN HOUSING UNIT 11 UPPER WERE IN FACT VICTIMS OF SLIP AND FALL ACCIDENTS IN THE SHOWER AREA WHERE THERE WERE NO RUBBER MATS PRESENT, AND THAT THEY CONTINUED TO BE DANGEROUS CONDITIONS THAT STILL CONTINUE TO BE DETRIMENTAL TO PLAINTIFFS HEALTH. AS IF TO SAY THAT WAS NOT FAIRLY NOT

ENOUGH. THERE WAS ALSO A DEAFENING ODOR EMANATING FROM SOMEWHERE IN THE 11 UPPER DORMITORY IN THE E.M.T.C. FACILITY, A SEARCH OF THE SOURCE OF

THIS ODOR PLAINTIFFS DISCOVER THAT THERE ARE IN FACT PEELING PAINT, RUSTED PIPES CONTAINING ABESTOS AND AGED INSULATION HANGING FROM THE PIPES WHERE THERE IS NO VENTILATION. THIS DISASTROUS ENVIRONMENT HAS LONG TERM CANCEROUS EFFECT ON PLAINTIFFS WHO BREATHE THESE INFECTUOUS TOXIC MATERIALS DAILY WITHOUT VENTILATION IS BEYOND CRUEL AND UNUSUAL PUNISHMENT THAT VIOLATES THEIR EIGHTH AMENDMENT RIGHTS, BUT ALSO IS A CONTAMINATED HEALTH HAZARD IN VIOLATION OF CITY, STATE, AND FEDERAL PUBLIC HEALTH LAWS THAT FALL BELOW THE MINIMUM STANDARDS OF THE BOARD OF CORRECTION, THE REHABILITATION ACT, AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS. THERE IS ALSO AN ONGOING PROBLEM WITH DEFENDANT C.O. CACACE BADGE #11626 WHO HAS SOLE RESPONSIBILITY IN MAIL DELIVERY, ESPECIALLY LEGAL MAIL THAT IS NOT BEING LOGGED AND/OR DOCUMENTED UPON ITS ARRIVAL TO THE E.M.T.C. FACILITY. THIS DEFENDANT HAS ALSO BEEN THE PERPETRATOR WHO HAS ON MANY OCCASIONS CONFISCATED AS MUCH AS 100 U.S. STAMPS FROM PLAINTIFFS WITHOUT THE ISSUANCE OF A CONTRABAND AND/OR PROPERTY RECEIPT AS PER DEPARTMENTAL POLICY AND DIRECTIVES. THIS ALSO VIOLATES PLAINTIFFS

SIXTH AMENDMENT RIGHTS IN HAVING ACCESS TO THE COURTS, AND HINDERS PLAINTIFFS ABILITY TO PROSECUTE PRO SE COMPLAINTS AND MAKE COURT ORDERED DEADLINES IN A TIMELY MANNER, WITHOUT PREJUDICE. ALL THESE DEFENDANTS ACTED IN CONCERT WITH EACH OTHER AND AS CIVIL DUTIES INVOLVED THESE DEFENDANTS ALSO ACTED UNDER THE COLOR OF STATE LAW. THESE MATTERS WERE PURSUED THROUGH THE GRIEVANCE OFFICE TO NO AVAIL AND NO REPRIEVE AND/OR RELIEF WAS HANDED DOWN BY ANY OF THE TOP PRISON DEFENDANTS IN THIS ACTION. IN CONNECTION WITH THE ALLEGED BLUE WALL OF SILENCE AMONG CORRECTION PERSONNEL THE CAMERAS IN DORMITORY 11 UPPER ARE NOT FUNCTIONING BECAUSE OF ATTEMPTS TO COVER-UP WRONGDOING BY THESE DEFENDANTS IN SAID DORMITORY 11 UPPER IN THE ERIC M. TAYLOR CENTER (E.M.T.C.) AS SUPERVISOR

OFFICIALS THE DEFENDANTS COMMISSIONER JOSEPH PONTE, WARDE KISA SMALLS, DEPUTY WARDEN OF SECURITY A. BLACKMON, AND CAPTAIN PURDY, ARE LIABLE UNDER MUNICIPAL LAW WHEREAS THESE DEFENDANTS DID NOT TRAIN AN/OR CREATE POLICIES AND DIRECTIVES THAT WOULD PREVENT POOR CONDITIONS IN THE JAIL, AND WOULD ENSURE THAT ALL PLAINTIFFS DID RECEIVE LEGAL MAIL THAT WAS IN FACT LOGGED AND PROPER PROCEDURES WERE TAKEN TO ENSURE THE SAFETY OF ALL PLAINTIFFS ESPECIALLY FROM TOXIC WASTE, AND THE INHALATION OF SUBSTANCES AND BAD ATMOSPHERIC MATERIALS LIKE ABESTOS THAT IS KNOWN TO HAVE LONG TERM EFFECTS OF CANCER AND OTHER DEADLY DISEASES AND VIRUSES ASSOCIATED WITH FECES URINE AND ABESTOS. FOR THAT THERE IS NO IMMUNITY FROM ANY LIABILITY, AND THIS ACTION SHALL BE PROCESSED AS SUCH. WHEREFORE IN LIGHT OF THE FOREGOING THE PLAINTIFFS NAMED HEREIN PRAYS AND ASKS THIS COURT TO RESPECTFULLY TO INFLICT AND IMPOSE JUSTICE FOR ALL PLAINTIFFS ARE CITIZENS OF THE UNITED STATES TO AVOID MISCARRIAGE OF JUSTICE IN THE INTEREST OF JUSTICE.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS


By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

MAY 9, 2017		
Dated		Plaintiff's Signature
CURTIS		NICHOLS
First Name	Middle Initial	Last Name
10-10 HAZEN ST, E.M.T.C.		
Prison Address		11370
EAST ELMHURST	N.Y.	
County, City	State	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: 5/15/17

(inset) stood by Correction Commissioner Joseph Ponte as controversy of his use of city car for trips to Maine grew.

Ponte's use of a city car for a trip to Maine was the subject of a controversy that grew into a scandal.

The controversy began when Ponte was seen in a city car on a trip to Maine. The car was a city-owned vehicle, and Ponte was the Commissioner of the Maine State Prison.

Ponte's trip to Maine was for a business meeting. He was accompanied by a staff member. The trip was for a business meeting.

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PHOTO BY AP/WIDEWORLD

Wilker, Dale

From: Wilker, Dale
Sent: Thursday, April 27, 2017 2:54 PM
To: 'CONSTITUENT SERVICES'
Cc: BOC COMPLAINTS (complaints@boc.nyc.gov); Katznelson, Zachary; Lopez, Ginger; McManus, Tara; Short, Stefen; Smith, Edwina; Vela, Veronica; Werlwas, Mary Lynne; Wolozin, Elizabeth
Subject: UNSAFE CONDITION / LACK OF SHOWER MATS: Larry McNair 300-17-00204 EMTC



The Prisoners' Rights Project has been contacted by Mr. McNair who reports that there are no shower mats in his housing area to prevent slip and fall accidents. He says that a number of people have been injured as a result of the absence of these mats.

Would you please have DOC Central Office staff investigate this allegation as soon as possible and make sure that shower mats are provided in all EMTC housing areas?

Thank you for your attention to this matter. Would you please let us know the Department's findings and any actions taken to resolve this complaint?

Dale A. Wilker

Staff Attorney
The Legal Aid Society
Prisoners' Rights Project
199 Water Street, Room 3059
New York, New York 10038
tel: 212-577-3530 ext. 3943
fax: 646-616-4631
email: dwilker@legal-aid.org

This email is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. The information contained in this email is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, then please destroy the email after advising by reply that you erroneously received this communication and that it has been destroyed and permanently deleted from all of your email servers and work stations. The receipt by anyone other than the intended recipient does not waive the attorney-client privilege; neither will it constitute a waiver of the work-product doctrine. Please take note that: (1) e mail communication is not a secure method of communication; (2) any e mail that is sent to you or by you may be copied and held by any or all computers through which it passes as it is transmitted; and (3) persons not participating in our communications may intercept our communications by improperly accessing either of our computers or another computer unconnected to either of us through which email is passed.

MR. LARRY McNAIR #3001700204
10-10 HAZEN ST, E.M.T.C.
EAST ELMHURST, N.Y. 11370

BOARD OF CORRECTION
C/O MS. PATRICIA MORGESE
MUNICIPAL BUILDING
1 CENTRE STREET, 22ND FLOOR
NEW YORK, N.Y. 10013

MAY 10, 2017

RE: PEELING PAINT/RUSTING PIPES, INSTALLATION/LEGAL MAIL TAMPERING
NO LOGGING/RETALIATION/ABESTOS/VENTILLATION

DEAR MS. MORGESE:

IN REFERENCE TO THE ABOVE ENTITLED MATTERS, I AM HOUSED AT THE ERIC M. TAYLOR CENTER (E.M.T.C.), AND WRITE THIS LETTER ON BEHALF OF THE ENTIRE DORMITORY INMATES HOUSED IN THE 11 UPPER DORMITORY. THE FOLLOWING COMPLAINT ARISES OUT OF AN BAD ODOR IN THE AIR. AS WE SEARCH FOR THE SOURCE OF THIS ODOR WE DISCOVER THAT IT IS IN FACT EMANATING FROM RUSTED PIPES, FALLING OLD INSTALLATION, PEELING PAINT FROM THE CEILINGS, WHERE THERE IS POSSIBLE ABESTOS GROWTH AS WELL, WHICH IS DEFINITELY A HAZARD TO EVERYONE LIVING AND BREATHING THIS INFECTIOUS SAUBSTANCES THAT MAY EVEN BE RELTED TO CANCEROUS DISEASES IN THE FUTURE.

IN ADDITION, MAIL IS BEING (LEGAL MAIL) DISTRIBUTED BY A C.O. CACACE BADGE #11626 WITHOUT BEING LOGGED IN THE LOG BOOK PER DEPARTMENTAL RULE, DIRECTIVE, AND REGULATIONS. I ALSO SUSPECT THAT MY LEGAL MAIL IS BEING TAMPERED WITH AND DISCARDED BY THIS SAME MAIL OFFICER CACACE #11626 IN RETALIATION TO A GRIEVANCE I PREVIOUSLY FILED AGAINST HER FOR THE THGEFT OF 100 U.S. STAMPS WITHOUT THE ISSUANCE OF A CONTRABAND, AND/OR PROPERTY RECEIPT. IT WOULD BE HIGHLY APPRECIATED IF THIS MATTER COULD INVESTIGATED IMMEDIATELY DUE TO THE FACT THAT SOME OF US HAVE COURT DEADLINES TO MEET, AND WE CANNOT ACCESS THE COURTS OR PERFECT LEGAL DOCUMENTS WITHOUT SAID LOGGING. WE THANK YOU IN ADVANCE FOR YOUR TIME AND HIGHLY APPRECIATE YOUR EFFORTS IN THESE URGENT MATTERS. WE LOOK MFORWARD TO YOUR PROMPT REPLY TO AVOID UNNECESSARY LITIGATION THROUGH FEDERAL COURT.

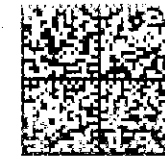
CC:

FILE.

RESPECTFULLY YOURS,


Curtis Nichols #9801700114
10-10 HAZEN STREET
EAST ELMHURST NEW YORK, 11370

CEIVED
SDNY DOCKET UNIT
2017 JUN -6 PM 3:25



US POSTAGE, BY FIRST CLASS
ZIP 11370 \$ 008.55⁰
02 1W
0001390116 MAY 22 2017

USM^{P3}
SDNY

to: SE INTAKE unit

Room
UNITED STATES District Court
Southern District of New York
U.S. Courthouse - 500 Pearl St.
New York, N.Y. 10007

LEGAL MAIL - CONFIDENTIAL